



Senate

General Assembly

File No. 347

January Session, 2015

Substitute Senate Bill No. 383

Senate, April 1, 2015

The Committee on Labor and Public Employees reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING WORKFORCE PARTICIPATION
THRESHOLDS FOR PUBLIC WORKS CONTRACTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) Every contract to which the state or any political subdivision of
4 the state other than a municipality is a party shall contain the
5 following provisions:

6 (1) The contractor agrees and warrants that in the performance of
7 the contract such contractor will not discriminate or permit
8 discrimination against any person or group of persons on the grounds
9 of race, color, religious creed, age, marital status, national origin,
10 ancestry, sex, gender identity or expression, intellectual disability,
11 mental disability or physical disability, including, but not limited to,
12 blindness, unless it is shown by such contractor that such disability

13 prevents performance of the work involved, in any manner prohibited
14 by the laws of the United States or of the state of Connecticut; and the
15 contractor further agrees to take affirmative action to insure that
16 applicants with job-related qualifications are employed and that
17 employees are treated when employed without regard to their race,
18 color, religious creed, age, marital status, national origin, ancestry, sex,
19 gender identity or expression, intellectual disability, mental disability
20 or physical disability, including, but not limited to, blindness, unless it
21 is shown by such contractor that such disability prevents performance
22 of the work involved;

23 (2) The contractor agrees, in all solicitations or advertisements for
24 employees placed by or on behalf of the contractor, to state that it is an
25 "affirmative action-equal opportunity employer" in accordance with
26 regulations adopted by the commission;

27 (3) The contractor agrees to provide each labor union or
28 representative of workers with which such contractor has a collective
29 bargaining agreement or other contract or understanding and each
30 vendor with which such contractor has a contract or understanding, a
31 notice to be provided by the commission advising the labor union or
32 workers' representative of the contractor's commitments under this
33 section, and to post copies of the notice in conspicuous places available
34 to employees and applicants for employment;

35 (4) The contractor agrees to comply with each provision of this
36 section and sections 46a-68e and 46a-68f and with each regulation or
37 relevant order issued by said commission pursuant to sections 46a-56,
38 46a-68e and 46a-68f; and

39 (5) The contractor agrees to provide the Commission on Human
40 Rights and Opportunities with such information requested by the
41 commission, and permit access to pertinent books, records and
42 accounts, concerning the employment practices and procedures of the
43 contractor as relate to the provisions of this section and section 46a-56.

44 (b) If the contract is a public works contract, the contractor agrees

45 and warrants that he will make good faith efforts to employ (1)
46 minority business enterprises as subcontractors and suppliers of
47 materials on such public works project, and (2) a workforce comprised
48 of not less than twenty-five per cent minorities, as such term is defined
49 in subsection (a) of section 32-9n, not less than twenty-five per cent
50 state residents and not less than eight per cent women.

51 (c) (1) Any contractor who has one or more contracts with the state
52 or a political subdivision of the state that is valued at less than fifty
53 thousand dollars for each year of the contract shall provide the state or
54 such political subdivision of the state with a written or electronic
55 representation that complies with the nondiscrimination agreement
56 and warranty under subdivision (1) of subsection (a) of this section,
57 provided if there is any change in such representation, the contractor
58 shall provide the updated representation to the state or such political
59 subdivision not later than thirty days after such change.

60 (2) Any contractor who has one or more contracts with the state or a
61 political subdivision of the state that is valued at fifty thousand dollars
62 or more for any year of the contract shall provide the state or such
63 political subdivision of the state with any one of the following:

64 (A) Documentation in the form of a company or corporate policy
65 adopted by resolution of the board of directors, shareholders,
66 managers, members or other governing body of such contractor that
67 complies with the nondiscrimination agreement and warranty under
68 subdivision (1) of subsection (a) of this section;

69 (B) Documentation in the form of a company or corporate policy
70 adopted by a prior resolution of the board of directors, shareholders,
71 managers, members or other governing body of such contractor if (i)
72 the prior resolution is certified by a duly authorized corporate officer
73 of such contractor to be in effect on the date the documentation is
74 submitted, and (ii) the head of the agency of the state or such political
75 subdivision, or a designee, certifies that the prior resolution complies
76 with the nondiscrimination agreement and warranty under
77 subdivision (1) of subsection (a) of this section; or

78 (C) Documentation in the form of an affidavit signed under penalty
79 of false statement by a chief executive officer, president, chairperson or
80 other corporate officer duly authorized to adopt company or corporate
81 policy that certifies that the company or corporate policy of the
82 contractor complies with the nondiscrimination agreement and
83 warranty under subdivision (1) of subsection (a) of this section and is
84 in effect on the date the affidavit is signed.

85 (3) Neither the state nor any political subdivision shall award a
86 contract to a contractor who has not provided the representation or
87 documentation required under subdivisions (1) and (2) of this
88 subsection, as applicable. After the initial submission of such
89 representation or documentation, the contractor shall not be required
90 to resubmit such representation or documentation unless there is a
91 change in the information contained in such representation or
92 documentation. If there is any change in the information contained in
93 the most recently filed representation or updated documentation, the
94 contractor shall submit an updated representation or documentation,
95 as applicable, either (A) not later than thirty days after the effective
96 date of such change, or (B) upon the execution of a new contract with
97 the state or a political subdivision of the state, whichever is earlier.
98 Such contractor shall also certify, in accordance with subparagraph (B)
99 or (C) of subdivision (2) of this subsection, to the state or political
100 subdivision, not later than fourteen days after the twelve-month
101 anniversary of the most recently filed representation, documentation
102 or updated representation or documentation, that the representation
103 on file with the state or political subdivision is current and accurate.

104 (d) For the purposes of this section, "contract" includes any
105 extension or modification of the contract, "contractor" includes any
106 successors or assigns of the contractor, "marital status" means being
107 single, married as recognized by the state of Connecticut, widowed,
108 separated or divorced, and "mental disability" means one or more
109 mental disorders, as defined in the most recent edition of the American
110 Psychiatric Association's "Diagnostic and Statistical Manual of Mental
111 Disorders", or a record of or regarding a person as having one or more

112 such disorders. For the purposes of this section, "contract" does not
113 include a contract where each contractor is (1) a political subdivision of
114 the state, including, but not limited to, a municipality, (2) a quasi-
115 public agency, as defined in section 1-120, (3) any other state, as
116 defined in section 1-267, (4) the federal government, (5) a foreign
117 government, or (6) an agency of a subdivision, agency, state or
118 government described in subparagraph (1), (2), (3), (4) or (5) of this
119 subsection.

120 (e) For the purposes of this section, "minority business enterprise"
121 means any small contractor or supplier of materials fifty-one per cent
122 or more of the capital stock, if any, or assets of which is owned by a
123 person or persons: (1) Who are active in the daily affairs of the
124 enterprise, (2) who have the power to direct the management and
125 policies of the enterprise, and (3) who are members of a minority, as
126 such term is defined in subsection (a) of section 32-9n; and "good faith"
127 means that degree of diligence which a reasonable person would
128 exercise in the performance of legal duties and obligations. "Good faith
129 efforts" shall include, but not be limited to, those reasonable initial
130 efforts necessary to comply with statutory or regulatory requirements
131 and additional or substituted efforts when it is determined that such
132 initial efforts will not be sufficient to comply with such requirements.

133 (f) Determination of the contractor's good faith efforts shall include
134 but shall not be limited to the following factors: The contractor's
135 employment and subcontracting policies, patterns and practices;
136 affirmative advertising, recruitment and training; technical assistance
137 activities and such other reasonable activities or efforts as the
138 commission may prescribe that are designed to ensure the
139 participation of minority business enterprises in public works projects.

140 (g) The contractor shall develop and maintain adequate
141 documentation, in a manner prescribed by the commission, of its good
142 faith efforts.

143 (h) The contractor shall include the provisions of subsections (a) and
144 (b) of this section in every subcontract or purchase order entered into

145 in order to fulfill any obligation of a contract with the state and such
146 provisions shall be binding on a subcontractor, vendor or
147 manufacturer unless exempted by regulations or orders of the
148 commission. The contractor shall take such action with respect to any
149 such subcontract or purchase order as the commission may direct as a
150 means of enforcing such provisions including sanctions for
151 noncompliance in accordance with section 46a-56; provided, if such
152 contractor becomes involved in, or is threatened with, litigation with a
153 subcontractor or vendor as a result of such direction by the
154 commission, the contractor may request the state of Connecticut to
155 enter into any such litigation or negotiation prior thereto to protect the
156 interests of the state and the state may so enter.

157 Sec. 2. Section 46a-68c of the general statutes is repealed and the
158 following is substituted in lieu thereof (*Effective October 1, 2015*):

159 (a) In addition to the provisions of section 4a-60, as amended by this
160 act, each contractor with fifty or more employees awarded a public
161 works contract in excess of fifty thousand dollars in any fiscal year, but
162 not subject to the provisions of section 46a-68d, as amended by this act,
163 shall develop and file with the commission an affirmative action plan
164 [which] that shall (1) comply with regulations adopted by said
165 commission, and (2) include a statement that the contractor shall make
166 good faith efforts, as described in subsection (e) of section 4a-60, as
167 amended by this act, and determined pursuant to subsection (b) of this
168 section, to employ a workforce comprised of not less than twenty-five
169 per cent minorities, as such term is defined in subsection (a) of section
170 32-9n, not less than twenty-five per cent state residents and not less
171 than eight per cent women. Failure to develop an approved affirmative
172 action plan pursuant to this section shall act as a bar to bidding on or
173 the award of future contracts until such requirement has been met.
174 When the commission approves an affirmative action plan pursuant to
175 this section, it shall issue a certificate of compliance to the contractor.
176 This certificate shall be prima facie proof of the contractor's eligibility
177 to bid or be awarded contracts for a period of two years from the date
178 of the certificate. Such certificate shall not excuse the contractor from

179 monitoring by the commission or from the reporting and record-
180 keeping requirements of sections 46a-68e and 46a-68f. The commission
181 may revoke the certificate of a contractor if the contractor does not
182 implement its affirmative action plan in compliance with this section
183 and sections 4a-60, as amended by this act, 4a-60g, 4a-62, 46a-56, 46a-
184 68b, 46a-68d, as amended by this act, and 46a-68e to 46a-68k, inclusive.

185 (b) Determination of the contractor's good faith efforts shall include,
186 but shall not be limited to, the following factors: (1) The contractor's
187 employment and subcontracting policies, patterns and practices; (2)
188 affirmative advertising, recruitment and training; and (3) technical
189 assistance activities and such other reasonable activities or efforts as
190 the commission may prescribe that are designed to ensure the
191 employment of such minorities, state residents and women in public
192 works projects. The contractor shall develop and maintain adequate
193 documentation, in a manner prescribed by the commission, of its good
194 faith efforts.

195 Sec. 3. Section 46a-68d of the general statutes is repealed and the
196 following is substituted in lieu thereof (*Effective October 1, 2015*):

197 (a) In addition to the provisions of section 4a-60, as amended by this
198 act, every public works contract subject to the provisions of part II of
199 chapter 60 shall also be subject to the provisions of this section. After a
200 bid has been accepted but before a contract is awarded, the successful
201 bidder shall file and have approved by the commission an affirmative
202 action plan that shall include a statement that the contractor shall make
203 good faith efforts, as described in subsection (e) of section 4a-60, as
204 amended by this act, and determined pursuant to subsection (b) of this
205 section, to employ a workforce comprised of not less than twenty-five
206 per cent minorities, as such term is defined in subsection (a) of section
207 32-9n, not less than twenty-five per cent state residents and not less
208 than eight per cent women. The commission may provide for
209 conditional acceptance of an affirmative action plan provided written
210 assurances are given by the contractor that it will amend its plan to
211 conform to affirmative action requirements. The state shall withhold

212 two per cent of the total contract price per month from any payment
 213 made to such contractor until such time as the contractor has
 214 developed an affirmative action plan, and received the approval of the
 215 commission. Notwithstanding the provisions of this section, a
 216 contractor subject to the provisions of this section may file a plan in
 217 advance of or at the same time as its bid. The commission shall review
 218 plans submitted pursuant to this section within sixty days of receipt
 219 and either approve, approve with conditions or reject such plan. When
 220 the commission approves an affirmative action plan pursuant to this
 221 section, it shall issue a certificate of compliance to the contractor as
 222 provided in section 46a-68c, as amended by this act.

223 (b) Determination of the contractor's good faith efforts shall include,
 224 but shall not be limited to, the following factors: (1) The contractor's
 225 employment and subcontracting policies, patterns and practices; (2)
 226 affirmative advertising, recruitment and training; and (3) technical
 227 assistance activities and such other reasonable activities or efforts as
 228 the commission may prescribe that are designed to ensure the
 229 employment of such minorities, state residents and women in public
 230 works projects. The contractor shall develop and maintain adequate
 231 documentation, in a manner prescribed by the commission, of its good
 232 faith efforts.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	4a-60
Sec. 2	October 1, 2015	46a-68c
Sec. 3	October 1, 2015	46a-68d

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Various State Agencies	All Funds - Potential Cost	See Below	See Below

Municipal Impact: None

Explanation

The bill expands affirmative action requirements for contractors on certain public works projects. The bill requires affirmative action plans to include a statement that contractors will make good faith efforts to employ at least 25% minorities, 25% state residents and 8% women. The Commission on Human Rights and Opportunities (CHRO) can revoke a contractor's certification if the contractor does not implement its affirmative action plan.

Expanding the affirmative action requirements may increase the cost of certain public works contracts if 1) potential lowest qualified bidders do not meet the bill's hiring requirements; or 2) potential lowest qualified bidders hire additional employees to meet the bill's requirements. These costs would likely be passed onto the state.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 383*****AN ACT CONCERNING WORKFORCE PARTICIPATION THRESHOLDS FOR PUBLIC WORKS CONTRACTS.*****SUMMARY:**

This bill expands affirmative action requirements for contractors on certain public works projects. Under current law, public works contracts awarded by the state or its political subdivisions (but not municipalities) must require contractors on the project to make good faith efforts to employ minority business enterprises as subcontractors and material suppliers. The bill additionally requires these contractors to (1) make good faith efforts to employ at least 25% minorities, 25% state residents, and 8% women and (2) include this requirement in every subcontract or purchase order they enter into to fulfill their contract with the state. By law, “public works contracts” are contracts awarded by the state or its political subdivisions, other than municipalities, for any state financed construction, rehabilitation, conversion, extension, demolition, or repair of a public building, highway, or other real property (CGS § 46a-68b).

The law requires contractors awarded certain public works contracts to develop and file an affirmative action plan with the Commission on Human Rights and Opportunities (CHRO) (see BACKGROUND). The bill requires these plans to include a statement that the contractor will make good faith efforts to employ at least 25% minorities, 25% state residents, and 8% women.

Under current law and the bill, the determination of a contractor’s “good faith efforts” includes the contractor’s employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; and technical assistance activities and other reasonable activities or efforts prescribed by CHRO to ensure minority

business participation in public works projects. A contractor must develop and maintain adequate documentation of its good faith efforts in a manner CHRO prescribes.

EFFECTIVE DATE: October 1, 2015

BACKGROUND

Affirmative Action Plans

On certain state public works projects estimated to cost over \$500,000, the law requires a contractor to submit to CHRO an affirmative action plan after its bid has been accepted but before it is awarded (CGS § 4b-91). Contractors with at least 50 employees must also submit an affirmative action plan if they are awarded a public works contract for more than \$50,000 in any fiscal year (CGS § 46a-68c).

By law, contractors with CHRO-certified affirmative action plans can bid on, or be awarded, public works contracts for two years. The commission can revoke a contractor's certification if the contractor does not implement its affirmative action plan.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/12/2015)